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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H 4

FILE:

Office: TEXAS SERVICE CENTER

Date: JUN 10 2004

IN RE:

Applicant:

APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who on June 8, 1966, was removed from the United States pursuant to section 212(a)(6)(E)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(E)(i), for knowingly encouraging, assisting, abetting or aiding any other alien to enter or to try to enter the United States in violation of law. The record reflects that the applicant was present in the United States on May 13, 1997. The director requested information from the applicant in order to establish if he had resided outside of the United States for five consecutive years following his deportation. The applicant has not provided the requested information and therefore the director concluded that an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was necessary. The applicant is inadmissible under section 212(a)(9)(A)(ii) the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) and he now seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii) in order to remain in the United States and reside with his spouse and children.

The Director determined that the applicant is not eligible for any exception or waiver under section 212(a)(6)(E)(i) of the Act and denied the Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated January 17, 1997.

On appeal the applicant's son states that the applicant's social security benefits are being blocked because of his status and that he should be permitted to live in the United States with his children, grandchildren, great grandchildren and U.S. citizen spouse.

The applicant executed a sworn statement on August 28, 1979, in which he states that in 1965 at El Paso, Texas he was convicted of alien smuggling and was deported to Mexico. Furthermore in a letter addressed to the Texas Service Center he states that he assisted seven or eight individuals not related to him in order to illegally enter the United States

Section 212(a)(6)(E) of the Act provides, in pertinent part, that:

(i) In general.-Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

. . . .

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) of the Act provides that:

The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the

United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

Section 212(a)(6)(E)(i) of the Act describes the basic smuggling activities that will suffice, even in the absence of a criminal conviction, to exclude or deport an alien from the United States. The record of proceeding clearly reflects that the applicant knowingly encouraged and assisted individuals to enter the United States in violation of law and therefore the applicant is inadmissible under section 212(a)(6)(E)(i) of the Act.

As stated above, section 212(d)(11) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(E)(i) of the Act is available to an applicant if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law. In the instant case the applicant was not found assisting a qualifying family member and therefore no waiver is available to him.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.